

Before the
Federal Communications Commission
Washington, D.C. 20554

ORIGINAL

MM Docket No. 92-6

In re Applications of

NORMANDY
BROADCASTING CORP.

For Renewal of License of
Station WYLR(FM) (95.9 Mhz)
Glens Falls, New York

and

LAWRENCE N. BRANDT

For a Construction Permit for
a new FM Station on 95.9 Mhz
at Glens Falls, New York

To: Administrative Law Judge
Richard L. Sippel

File No. DRH-910129UR

File No. DPH-910430MB

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APR 13 1992

Federal Communications Commission
Office of the Secretary

MOTION TO MODIFY AND ENLARGE ISSUES

Normandy Broadcasting Corporation, pursuant to ORDER FCC 92M-381 issued March 25, 1992, hereby petitions for the Enlargement of Issues with regards to the application of Lawrence N. Brandt (Brandt) for a construction permit on 95.9 Mhz:

- (A) To determine whether Brandt purposely deceived the commission as to Normandy's Certification on its renewal regarding whether it had placed materials in its public file at appropriate times.
- (B) To determine whether Brandt purposely withheld information from the FCC and Normandy in his application for his CP on 95.9 Mhz in Glens Falls.

(A) Purposely Deceiving the Commission

1. In Brandt's Petition to Modify of February 24, 1992, on page 3, Brandt states "Normandy's certification that it had placed the lists in WYLR's public files at the appropriate times was clearly false" (see Exhibit A).
2. In his Supplement of March 30, 1992, he again states "Normandy's representation....that it had done so was false" (see Exhibit B).
3. As copied from its public file, (see Exhibit C), and as confirmed this day by Mr. Kelson in the FCC Public Dockets branch, Normandy clearly checked "No" to question 8 on the renewal form and tried to honestly explain its errors.
4. As even the most cursory examination of the Normandy Renewal file would have shown this "No", we must surmise that Brandt

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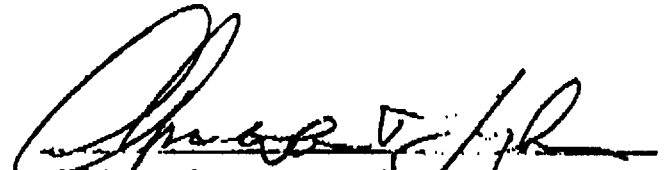
076

purposely abused and misrepresented facts in an effort to perhaps, drive Normandy out of this proceeding.

(B) Did Brandt Purposely Withhold Information

1. In his application filed April 29, 1991, file BPH-910410MB, in question 7 (a) Brandt admits an ownership interest, but in his Exhibit A states his only interest is in "Torjaq Inc." said interest being sold in 1988 (see Exhibit D).
2. In recently obtained information, it seems Brandt in fact was sole party in interest to no less than 8 applications before the FCC for new stations (see Exhibit E) dating from October 25, 1985 to March, 1992.
3. It is truly incredulous that any individual could forget 1 application, much less 8 or perhaps more, and a question stands as to why Mr. Brandt would try to hide this virtual shopping bag full of active pending broadcast stations from this court.

Wherefore, for the forgoing reasons, Lynch respectfully requests that the Petition be granted and that issues (a) and (b) be added against Lawrence Brandt.


Christopher P. Lynch, President
Normandy Broadcasting Corporation
217 Dix Avenue
Glens Falls, NY 12801
(518) 793-4444

Dated: April 13, 1992

Exh A

1989

1st Quarter : No list exists for this quarter - *clerk in file*
2nd Quarter : PSAs; no substantive FM programs *1/1/89*
3rd Quarter : PSAs; one live simulcast of a rock concert *3 PM PSA*
4th Quarter : PSAs; one 4 hour live remote

1990

1st Quarter : PSAs; live remotes totalling less than 25 hours

The foregoing chart shows that during at least seven calendar quarters of the last license term, Normandy did not place in WYLR's public file the information that it was required to place in the file pursuant to Section 73.3526(a)(9) of the Commission's rules. Moreover, as reflected on the face of the attached lists, the Issues/Programs lists covering WYLR's public file for the last three quarters of 1989 and the first quarter of 1990 were not prepared until June 12, 1990. Thus, even assuming that the content of those Issues/Programs lists met the minimum requirements of Section 73.3526(9), Normandy's certification that it had placed the lists in WYLR's public file at the appropriate time was clearly false since Section 73.3526(9) of the Rules requires that lists be placed in the public file by the tenth day of the succeeding calendar quarter.

The Issue of Normandy's Character
Qualifications Should be Modified Accordingly

In Barry Skidelsky, 6 FCC Rcd. 2221 (released April 29, 1991), Administrative Law Judge Kuhlmann held that Normandy was disqualified to operate a proposed FM facility in Queensbury, New York, under three issues:


1. Normandy has not demonstrated that it had reasonable assurance for its first antenna site,

Exhibit B

programs" and submitted a supplemental "list of broadcasts which WYLR has aired."

The Heckman Declaration and the Frasier Affidavit which are part of the record in MM Docket 90-181 provide the requisite substantiation that the issues/programs lists attached to the Petition constitute the only issues/programs lists for WYLR that Normandy had prepared and placed in that station's public file as of June, 1990 for the period from January, 1987 to June, 1990. The Lynch Declaration which is also a part of the record in MM Docket 90-181 provides further corroboration for this fact. The issues sought in the Petition relate solely to whether Normandy's representation in WYLR's license renewal application that it had placed the required documentation concerning the issues that WYLR had dealt with in its programming in the station's public file at the appropriate times. The materials attached hereto establish a prima facie case that during the period from January, 1987 to June, 1990, Normandy did not place the required documentation in WYLR's the issues/programs at the appropriate times and that Normandy's representation in WYLR's renewal application that it had done so was false.

Respectfully submitted,


David Tillotson
Arent, Fox, Kintner, Plotkin
& Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 857-6027

Date: March 30, 1992

is applicant in compliance with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments?

☒ Yes ☐ No

If No, attach as Exhibit No. _____ an explanation.

6. Since the filing of the applicant's last renewal application for this station or other major application, has an adverse finding been made or final action been taken by any court or administrative body with respect to the applicant or parties to the application in a civil or criminal proceeding, brought under the provisions of any law relating to the following: any felony; broadcast related antitrust or unfair competition; criminal fraud or fraud before another governmental unit; or discrimination? See exhibit 2

☐ Yes ☒ No

If Yes, attach as Exhibit No. _____ a full description of the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers) and the disposition of the litigation.

7. Would a Commission grant of this application come within 47 C.F.R. Section 1.1307, such that it may have a significant environmental impact?

☐ Yes ☒ No

If Yes, attach as Exhibit No. _____ an Environmental Assessment required by 47 C.F.R. Section 1.1311.

If No, explain briefly why not. Exhibit 3

8. Has the applicant placed in its station's public inspection file at the appropriate times the documentation required by 47 C.F.R. Sections 73.3520 or 73.3527?

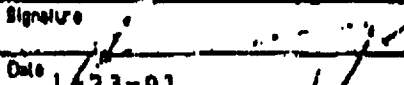
☐ Yes ☒ No

If No, attach as Exhibit No. _____ a complete statement of explanation.

The APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum or against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as set out in full in the application.

CERTIFICATION: I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Name Christopher P. Lynch	Signature 
Title President and General Manager	Date 1-23-91

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001.

WWSC

1450 AM



Normandy Broadcasting Corporation **49.8 PM**
WYUN

AN AFFILIATE OF THE AMERICAN BROADCASTING COMPANY

217 Dix Ave., Glens Falls, NY 12801 • 518-793-4144 • Day 792-9974

EXHIBIT 4

8. We believe we have, and in good faith, have attempted, to place all appropriate documentation required by 47 C.F.R. sections 73.3526 or 73.3527 to be in our files at the appropriate times. Upon close examination, one of these reports was missing. The only logical explanation is that in preparing applications for the NAB's Crystal Awards recognizing superior public service accomplishments, (we have been one of 50 finalists nationwide for the past 3 years) we referred to this quarter and then misplaced it. Also, upon a close examination a few quarterly lists seemed to inadequately reflect our efforts. While these lists were timely filed, I drafted additions to them, and with cover letters clearly showing the dates they were completed made them part of our issues/programs lists. I have also annexed our above mentioned Crystal Award entries to our issues/program lists and I believe not only are we in compliance with 47 C.F.R. Sections 73.3526 or 73.3527, but that this file fairly reflects our services to our community of license.

7. Does the applicant, any party to the application or any non-party equity owner in the applicant have, or have they had, any interest in:

(a) a broadcast station, or pending broadcast station application before the Commission?

☒ Yes ☐ No

(b) a broadcast application which has been dismissed with prejudice by the Commission?

☐ Yes ☒ No

(c) a broadcast application which has been denied by the Commission?

☐ Yes ☒ No

(d) a broadcast station, the license of which has been revoked?

☐ Yes ☒ No

(e) a broadcast application in any pending or concluded Commission proceeding which left unresolved character issues against the applicant?

☐ Yes ☒ No

If the answer to any of the questions in (a)-(e) above is Yes, state in an Exhibit the following information:

Exhibit No.
A

(1) Name of party having interest;

(2) Nature of interest or connection, giving dates;

(3) Call letters of stations or file number of application or docket; and

(4) Location.

8. (a) Are any of the parties to the application or non-party equity owners in the applicant related (as husband, wife, father, mother, brother, sister, son or daughter) to each other?

☐ Yes ☒ No

(b) Does any member of the immediate family (i.e., husband, wife, father, mother, brother, sister, son or daughter) of any party to the application or non-party equity owner in the applicant have any interest in or connection with any other broadcast station, pending broadcast application or newspaper in the same area (see Section 33.3531(e)) or, in the case of a television station applicant only, a cable television system in the same area (see Section 36.5211(f))?

☐ Yes ☒ No

If the answer to (a) or (b) above is Yes, attach an Exhibit giving full disclosure concerning the persons involved, their relationship, the nature and extent of such interest or connection, the file number of such application, and the location of such station or proposed station.

Exhibit No.
DNA

9. State in an Exhibit any interest the applicant or any party to this application proposes to divest in the event of a grant of this application.

Exhibit No.
DNA

OTHER MASS MEDIA INTERESTS

10. (a) Do individuals or entities holding nonattributable interests of 5% or more in the applicant have an attributable ownership interest or corporate officership or directorship in a broadcast station, newspaper or CATV system in the same area? (see Instruction 8 to Section 11.)

☐ Yes ☒ No

(b) Does any member of the immediate family (i.e., husband, wife, father, mother, brother, sister, son or daughter) of an individual holding a nonattributable interest of 5% or more in the applicant have any interest in or connection with any other broadcast station, pending broadcast application, newspaper in the same area (see Section 33.3531(e)), or, in the case of a television station applicant only, a cable television system in the same area (see Section 36.5211(f))?

☐ Yes ☒ No

If the answer to (a) and/or (b) above is Yes, attach an Exhibit giving a full disclosure concerning the persons involved, their relationship, the nature and extent of such interest or connection, the file number of such application, and the location of such station or proposed station.

Exhibit No.
DNA

Application (FCC Form 301 for
Construction Permit
Glens Falls, New York

EXHIBIT A

Applicant was a nonvoting stockholder in Torjaq, Inc. which filed an application (BPH-851213MD) for a construction permit for a new FM station in White Rock, New Mexico in 1985 and was awarded a permit for the station in 1987. Applicant sold his interest in Torjaq, Inc. in 1988.

MULTIPOINT DISTRIBUTION SERVICE
(SINGLE & MULTIPANEL)

Mar 16, 1992

ACTIONS TAKEN:

File Number Applicant

Channel Primary Service Area

1537-04-P-83 BELLEN, INC.
Application for CONDITIONAL LICENSE FOR A NEW STATION Dismissed without prejudice by the Commission 04/04/1988.
Application appeared on public notice dated 04/24/1986.

(E group) JAMESBORO, IN

1538-04-P-83 BELLEN, INC.
Application for CONDITIONAL LICENSE FOR A NEW STATION Dismissed without prejudice by the Commission 03/12/1982.
Application appeared on public notice dated 10/25/1985.

(E group) CHANDLER, NC

1640-04-P-83 BELLEN, INC.
Application for CONDITIONAL LICENSE FOR A NEW STATION Dismissed without prejudice by the Commission 03/12/1982.
Application appeared on public notice dated 11/12/1985.

(E group) GALEBORO, NC

1713-04-P-83 LAWRENCE N. BRADY
Application for CONDITIONAL LICENSE FOR A NEW STATION Dismissed without prejudice by the Commission 03/12/1982.
Application appeared on public notice dated 10/25/1985.

(E group) CHANDLER, NC

1744-04-P-83 LAWRENCE N. BRADY
Application for CONDITIONAL LICENSE FOR A NEW STATION Dismissed without prejudice by the Commission 03/24/1988.
Application appeared on public notice dated 02/15/1986.

(E group) FLAGSTAFF, AZ

1780-04-P-83 LAWRENCE N. BRADY
Application for CONDITIONAL LICENSE FOR A NEW STATION Dismissed without prejudice by the Commission 03/12/1982.
Application appeared on public notice dated 10/25/1985.

(E group) HARTFORD, CT

1780-04-P-83 LAWRENCE N. BRADY
Application for CONDITIONAL LICENSE FOR A NEW STATION Dismissed without prejudice by the Commission 03/12/1982.
Application appeared on public notice dated 02/24/1988.

(E group) INDIAN, GA

1811-04-P-83 LAWRENCE N. BRADY
Application for CONDITIONAL LICENSE FOR A NEW STATION Dismissed without prejudice by the Commission 03/12/1982.
Application appeared on public notice dated 11/15/1986.

(E group) MARBLE, IN

1813-04-P-83 LAWRENCE N. BRADY
Application for CONDITIONAL LICENSE FOR A NEW STATION Dismissed without prejudice by the Commission 03/12/1982.
Application appeared on public notice dated 01/24/1986.

(E group) NEW HAVEN, CT

1856-04-P-83 LAWRENCE N. BRADY
Application for CONDITIONAL LICENSE FOR A NEW STATION Dismissed without prejudice by the Commission 03/12/1982.
Application appeared on public notice dated 03/28/1986.

(E group) SHERBORN, MA

1865-04-P-83 LAWRENCE N. BRADY
Application for CONDITIONAL LICENSE FOR A NEW STATION Dismissed without prejudice by the Commission 03/12/1982.
Application appeared on public notice dated 10/25/1985.

(E group) SYRACUSE, NY

1912-04-P-83 BLOC & ASSOCIATES
Application for CONDITIONAL LICENSE FOR A NEW STATION Dismissed without prejudice by the Commission 03/12/1992.
Application appeared on public notice dated 11/12/1985.

(E group) CHANDLER, NC

1912-04-P-83 BLOC & ASSOCIATES
Application for CONDITIONAL LICENSE FOR A NEW STATION Dismissed without prejudice by the Commission 03/12/1992.
Application appeared on public notice dated 11/12/1985.

(E group) PALM BEACH, FL

CERTIFICATE OF SERVICE

I, ROSE M. ANGELO, a secretary in the office of Normandy Broadcasting Corporation do hereby certify that a copy of the foregoing ~~NOTICE OF DEPOSITION~~ ^{MOTION TO} ~~MODIFY AND ENLARGE ISSUES~~ has been sent via U.S. Mail, First-Class postage prepaid this 13th day of April, 1992 to the following:

Administrative Law Judge
Richard L. Gippel
Federal Communications Commission
2000 L Street, N.W., Room 212
Washington, D.C. 20554

Paulette Laden, Esq.
Federal Communications Commission
Hearing Branch, Enforcement Division
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

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Rose M. Angelo